Supreme Court, U.S.
FILED

98 908 SEP 30 1998

OFFICE OF THE CLERK

IN THE SUPREME COURT of the UNITED STATES
October Term

No. _____

MARTIN BARTHOLOMEW MOSS,
Petitoners,

v.

THE CITY OF MONTGOMERY, RANDY HARROLD, individually and officially, et. al.

Respondents.

Petition for a Writ of Certiorari to the United States Court Of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Martin Bartholomew Moss Pro Se
1308 Rosa L. Parks Avenue
Montgomery, Al 36108
334-832-9092

15pp

NOVEMBER 9, 1998

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals erred when it dismissed the appeal of the Petitioner on the grounds that the notice of appeals was not properly filed thereby ignoring the precedent set forth in Martin v. Campbell, 692 F2d. 112, (CA11, Ala 1982) where a premature notice of appeal from a non-final judgment or order were allowed to be retroactively validated by a subsequent final judgment or order, absent a showing of prejudice to the appellant.

LIST OF PARTIES

The only parties to this proceeding are Martin B. Moss, The City of Montgomery, Alabama; Randy Harrold, Gerald Manora, and John Wilson.

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PETITION FOR A WRIT OF CERTIORARI

I, Martin B. Moss, the petitioner, hereby petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, entered in this case

OPINIONS BELOW

The August 24, 1998, opinion of the Eleventh Circuit Court of Appeals is as far as the petitioner knows is an

unpublished decision and is included in the Appendix at 1a. The opinion of the United States District Court for the Middle District of Alabama is as far as the petitioner's knows is not reported and is included in the Appendix at 2a.

JURISDICTION

The judgment of the Court of Appeals denying my motion to reinstate my appeal was denied on July 13, 1998. I timely petitioned the court for a rehearing and it was denied on August 24, 1998. The jurisdiction of this court is invoked pursuant to 42 USC 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the parties injured in an action at law, suit in equity, or other proper proceeding for redress. ...

28 USC 1251 provides:

(a) The Supreme Court shall have original and exclusive of all controversies between two or more states.
(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceeding to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties.
(2) All controversies between the United States and a State.
(3) All actions or proceeding by a State against the citizens of another State against aliens.

STATEMENT

This case developed from an incident in Montgomery, Alabama where I was arrested in 1994 by members of the police department of the City of Montgomery, and charged with harassment and public intoxication. I was found guilty of the charges by the Municipal Court of the City of Montgomery. I appealed the conviction to the Circuit Court of Montgomery County where I was acquitted of all charges.

In 1996, I filed a lawsuit in the United States District Court for the Middle District of Alabama. (CV 96-01272-D-N). My attorney Mark Sabel discussed with me the possibility of settling this case, and I informed him that I would not agree to settle the case for the amount offered by the City of Montgomery. In October 1997, I learned from an article in the Montgomery Advertiser newspaper that my case had been settled. This was news to me and I contacted Mr. Sabel.

On, October 31, 1997, a hearing was held by Judge Ira DeMent on whether to enforce the Motion to Enforce the Settlement that had been filed by the Defendants. Judge DeMent granted the motion, ordered me to jail, and further ordered that I should remain there until I sign the settlement papers. In order to get out of jail, I signed the papers. On that date, I notified the court that I would appeal the decision a copy of which is included in Appendix C at 1a. I was not informed

that Judge DeMent would later sign a written order dismissing the case, therefore I was under the impression that the case was finished at that level.

My pro se brief was filed in a timely manner, and later I was informed by an assistant clerk from the Clerk of the Eleventh Circuit Court of Appeals in a letter dated February 27, 1998, that I needed to file a proof of service excerpts as required the Eleventh Circuit Court of Appeals Rule 20-1, together with a motion to file the record excerpts out of time. Appendix B at 4a & 5a.

The Eleventh Circuit Court of Appeals in order dated July 13, 1998 denied my appeal. Appendix B at 2a.

I filed a petition for a rehearing and in an order dated August 24, 1998, Eleventh Circuit Court of Appeals denied the petition. Appendix A at 1a.

I respectfully submit to the court that the above facts are material in the consideration of this writ.

REASONS FOR GRANTING THE WRIT

The judgment of the Eleventh Circuit Court of Appeals in this case should be reviewed by this Court because it erred in dismissing my appeal. As a citizen, I deserve the right to have my case heard. I was denied this right by Judge DeMent when he forced me to sign an agreement to settle this case or remain in jail. This was forced on me although there was no evidence before Judge DeMent that I had consented or gave my attorney authority to settle my case.

At the time that I filed notice of appeal, Judge DeMent did not inform me that he had not entered a final judgment.

Thus, I filed a notice of appeal with the impression that the case was over the district court level.

On appeal, I filed my brief, and corrected brief, and at no time did anyone inform me that I had missed a deadline in the filing of my appeal documents. In fact I communicated with the employees of the employees of the Clerk's office and was told by them that I could file the brief and corrected briefs and that it would be decided on its.

I submit that to end my case at this point would be an affront to the judicial principles on which this country was founded. I was falsely arrested, found innocents of the charges; my case against the respondents was dismissed by Jugde DeMent who forced me to sign a settlement agreement. Is this justice? I submit that it is not!

* * * *

In sum, the Eleventh Circuit's decision is wrong. Consider, the holding in Martin v. Campbell, 692 F2d. 112, (CA11, Ala 1982) where the same Court allowed a premature notice of appeal to be retroactively validated by a subsequent final judgment or order where there was not a showing of prejudice to the respondents.

CONCLUSION

For the above reasons, I respectfully request that my petition for a writ of certiorari be granted.

MARTIN B. MOSS
1308 ROSA PARKS AVENUE
MONTGOMERY, AL 36108
334-832-9092

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

97-6901

Filed: August 24, 1998

MARTIN BARTHOLOMEW MOSS,
Plaintiff-Appellant,,

versus.

THE CITY OF MONTGOMERY, RANDY HARROLD, individually and officially, Et. Al.

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Alabama

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BEFORE: BLACK and MARCUS, Circuit Judges.

BY THE COURT:

Appellant's "informal petition for rehearing," construed as a motion for reconsideration of this court's 7/13/98 order denying Appellant's motion to reinstate this appeal is DENIED. This case is CLOSED and Appellant may not file further pleading in this case. The clerk is directed to return to Appellant any further pleading he may attempt to file in this case.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

97-6901

Filed: July 13, 1998

MARTIN BARTHOLOMEW MOSS,
Plaintiff-Appellant,,

versus.

THE CITY OF MONTGOMERY, RANDY HARROLD, individually and officially, Et. Al.

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Alabama

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ORDER:

Appellant's motion to reinstate this appeal is **DENIED.**

Appellant's motion to file his brief and record excerpts out of time is **DENIED as moot because appeal has been dismissed.**

/s/ Frank M. Hull
UNITED STATES CIRCUIT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
_____ DIVISION

MARTIN BARTHOLOMEW MOSS,)
Plaintiff,)
vs.)
) CV-96D-1272N
THE CITY OF MONTGOMERY, et. al.)
)
Defendant.)

NOTICE OF APPEAL

Notice is hereby given that Martin Bartholomew Moss above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the judgment entered in this actin on the 31st day of October, 1997.

_____/s/ Martin Bartholomew Moss
Signature

November 5, 1997
Date of Signature

1308 Rosa L. Parks Avenue
Montgomery, Alabama 36108
Address

APPENDIX D

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

56 Forsyth Street
Atlanta, Georgia 3030

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

February 27, 1998

Martin Bartholomew Moss Pro Se
1308 Rosa L. Parks Avenue
Montgomery, Al 36108

Re: 97-6901 Moss v. City of Montgomery
DC DKT NO.: 96-01272 CV-D-N

The brief filed by you in this appeal does not contain Proof of Service as required by Fed.R.App.P. 25(d).

Your brief will be conditionally filed, subject to receipt of seven (7) copies of a corrected Proof of Service within fourteen (14 days. If you fail to file a corrected Proof of Service in compliance with Fed.R.App.P. 25(d) within that time the brief will be returned unfiled for failure to comply with the Rules. For appellants, this may result in dismissal of the appeal pursuant to 11th Cir. R. 42-1 (b), permission of the Court pursuant to Fed.R.App.P. 31(c).

Sincerely,
/s/
Thomas K. Kahn, Clerk

Reply To: Debbie Cordell /hb (404) 335-6171

BR-8B (6/96)

APPENDIX E

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsyth Street
Atlanta, Georgia 3030

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

February 27, 1998

Martin Bartholomew Moss Pro Se
1308 Rosa L. Parks Avenue
Montgomery, Al 36108

Re: 97-6901 Moss v. City of Montgomery
DC DKT NO.: 96-01272 CV-D-N

Pursuant to Eleventh Circuit Rule 42-1(b) you are notified that upon expiration of fourteen (14) days from this date, **this appeal will be dismissed by the clerk without further notice** unless the default (s) noted below have been corrected:

- File record excerpts as required by 11th Cir. R. 30-1, together with a motion to file the record excerpts out of time.

11th Cir. R. 42-1(b) also provides that "If an appellant is represented by appointed counsel, the clerk may refer the matter to the court for possible disciplinary action against counsel in lieu of dismissal."

Sincerely,
/s/
Thomas K. Kahn, Clerk

Reply To: Debbie Cordell /hb (404) 335-6171

c: District Court Clerk

DIS-1 (3/94